

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Kenneth Fox,) C/A NO. 3:10-2470-CMC-PJG
)
)
 Plaintiff,)
)
 v.)
)
 James H. May; Overture Walker; S.C.)
 Municipality of Cola; Bailiff (Issued Arrest)
 Warrant); Constable/Law Enf.: “ANG”)
 (as on A.W.); Issuing Judge: Tamk Collee”)
 Judge Broogram,)
)
 Defendants.)
)
 _____)

OPINION and ORDER

This matter is before the court on Plaintiff’s *pro se* “Motion for Reconsideration, or in the Alternative ‘Notice of Appeal.’” Dkt. #17 (filed Dec. 7, 2010).

Plaintiff’s motion was received for filing within twenty-eight (28) days of entry of Judgment. Therefore, it is properly considered under Rule 59(e) of the Federal Rules of Civil Procedure.

The Fourth Circuit Court of Appeals has interpreted Rule 59(e) to allow the court to alter or amend an earlier judgment ““(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.”” *Becker v. Westinghouse Savannah River Co.*, 305 F.3d 284, 290 (4th Cir. 2002) (quoting *Pac. Ins. Co. v. Am. Nat’l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998)). “Whatever may be the purpose of Rule 59(e) it should not be supposed that it is intended to give an unhappy litigant one additional chance to sway the judge.” *Atkins v. Marathon LeTourneau Co.*, 130 F.R.D. 625 (S.D. Miss. 1990).

Plaintiff presents five arguments why this court should reconsider its ruling, none of which persuade this court that its ruling was incorrect. Plaintiff first argues that he was not advised of appeal rights. There simply is no requirement that this court notify a party to a civil action of appeal rights.

Plaintiff's other grounds for reconsideration are merely reargument of matters previously considered by this court when the file was reviewed and considered at the time the Report and Recommendation of the Magistrate Judge was adopted. Accordingly, Plaintiff's motion for reconsideration is **denied**.

Plaintiff moves "in the alternative" that this court construe his motion as a Notice of Appeal and issue a certificate of appealability. Mot. at 1-2. The court grants Plaintiff's request in the alternative. The Clerk is directed to file Plaintiff's motion for reconsideration as a Notice of Appeal to the Fourth Circuit Court of Appeals as of the filing date of the motion. Plaintiff's motion for issuance of a certificate of appealability (COA) is moot because a COA only applies to a habeas corpus petition, not a § 1983 action.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON McGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
December 13, 2010